IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

TRUST PETITION NO. 1 OF 2003

Mr.Haroun Alim A.R. Yusuf & Ors. ...Petitioners

V/s.

Mr.Faruq A.R. Yusuf. ...Respondent

Mr.M.L. Palan i/b.M/s.M.K. Khatri & Co. for Petitioners.

CORAM : A.S. AGUIAR, J.
DATED : APRIL 28, 2005.

P.C. :-

1. Heard learned Advocate for the petitioners. None for the respondents though served.

2. The petitioners who are trustees of Sir Mohammed Yusuf Trust seek sanction of this Court for sale of the property bearing CS No.167 Mazgaon consisting of old chawls and hutment as also godown which chawls and godown are alleged to have been gutted in the fire few years ago. According to the petitioner, there are 26 tenements in chawl No.2 and 8 and 39 hutments on the property. The said property is situate at Mazgaon,

Bombay-10. The said property consist of 4346.18 sq.mtrs. or thereabout which is fully occupied by tenants and encroachments. The part of the property admeasuring 748.58 sq.mtrs and 1531.78 sq.mtrs. have been acquired by police quarters leaving the balance of 2065.82 sq.mtrs. with the trust which the petitioners are entitled to develop. The Trust which is a private family trust desires to convey the property in favour of the purchasers M/s.Hoor Construction Company who had submitted their offer for development of property pursuant to resolution passed by the trustees on 2nd July, 2002 and pursuant to the advertisement published in the "Free Press Journal" and "Navshakti" dated 16th May, 2002. All the trustees except respondents have signed the resolution.

3. It is the submission of the trustees that the property is valuable property. In its present condition, the property is a loss to the trust as the expenses exceed income from the property. The beneficiaries have consented to the sale of the property as disclosed by Exhibit I which is the copy of the

original consent duly certified a true copy signed by the learned Advocate for the petitioners.

4. Clause 14 of the Trust Deed dated 29th August, 1929 entitles the Mutavalis to sell the Trust property. Clause 14 read as follows :-

> "14. It shall be lawful for the Mutavalis to sell or give in exchange any immovable property forming part of the wakf properties with leave of the High Court of Bombay previously obtained."

. Clause 20 of the Sale Deed states as follows :-

> "20. Mutavalis shall hold their ordinary meetings once at least in every month. Fourth Mutavalis shall form a quorum. The Chairman shall preside at any meeting at which he shall be present in the absence of the Chairman the Mutavalis present shall elect their own Chairman for the meeting. During the life time of the

Wakif his opinion and decision shall prevail in the event of any difference of opinion among the Mutavalis and shall be binding on all Mutavalis. After the death of the Wakif every question shall be decided by majority of votes of the Mutavalis present at the meeting. In case of equality of votes the Chairman of the Meeting shall have a second or casting vote."

5. It appears that the petitioners being trustees of the said Trust have followed the due procedure for sale of the trust property. No objections are received for sale of the property to the highest bidder. Tender was made pursuant to the advertisement in the newspapers and accepted by the petitioners. Beneficiaries have given their consent to sell. The sale was advertised pursuant to the resolution of the trustees as being in interest of the trust. Respondent who was not present at the meeting, was given notice of the meeting as also the notice of this petition but has chosen not to respond.

6. In the circumstances, there appears to be no impediment to the petitioners or trustees selling the property. Accordingly, petition made absolute in terms of prayer clauses (a), (b), (c) and (d). Costs of this petition to come out of the trust property.

. Petition to stand disposed of.

(A.S. Aguiar, J.)